

Meeting Summary DNR Clean Air Act Task Force March 9, 2000 - Madison WI

Participants: Doug Aburano and Jacqueline Nwia, USEPA Region 5, Kathleen Standen, Wisconsin Electric; Greg Eirschele, Applied Environmental Sciences; Jim Beasom, Appleton Papers; Ernie Stetenfeld, AAA Wisconsin; Ed Wilusz, Wisconsin Paper Council; Hank Handzel, DeWitt Ross & Stevens (WPC and Printing Industries of Wisconsin); Bob Fassbender, Hough Fassbender Osborne & Associates; Pat Stevens, Wisconsin Manufacturers & Commerce; Rob Kennedy, Citizens for a Better Environment; Ken Yunker, Southeast Wisconsin Regional Planning Commission; Tom Walker, Wisconsin Transportation Builders Association; Keith Reopelle, Wisconsin's Environmental Decade; Jill Stevens, Alliant Energy; Michael Ricciardi, Madison Gas & Electric; Michael Allen, Stafford Rosenbaum LLC; Chris Snyder and Gary Williams, Wisconsin Auto & Truck Dealers Association; Dwight McComb, Federal Highway Administration; Steve Olson, Leonardo Academy; Kerry DeKeyser, Tecumseh Products Co.; Dave Kluesner, International Paper; Doug Clark, Foley & Lardner; Mark Steinberg, S.C. Johnson; Ed Newman and Gary Van Helvoirt, Wisconsin Public Service Corp.; Jeff Landsman, Wheeler Van Sickle; David Donovan, Northern States Power Co.; Lou Skibicki, RTP Environmental Associates; Dave Gardner, Briggs & Stratton; Don DeMaster, Kohler Co.; Del Malzahn, ANR Pipeline Co.; Jim Albrecht, STS Consultants; Renee Lesjak Bashel, Wisconsin Department of Commerce; Sally Jenkins, Public Service Commission of Wisconsin; John Etzler, Wisconsin Department of Administration; Kendra Bonderud, Legislative Fiscal Bureau; John Stolzenberg, Legislative Council; Carol Cutshall, Steve Hirshfeld, Dennis Presser, Carolyn Amegashie, Pat Trainer, Joe Conduah, Aaron Talley, Wisconsin Department of Transportation; Jay Hochmuth, DNR Division of Air & Waste; Tom Steidl, DNR Legal; Larry Bruss, Bob Lopez, Lloyd Eagan, Anne Urbanski, Dennis Koepke, Tom Karman, Chris Bovee, DNR Bureau of Air Management; Sue Hill and Jerry Medinger, DNR Southeast Region.

Next meeting: Wednesday, April 19, 2000, from 1:30 to 4:00 p.m., at the UW Memorial Union, 800 Langdon St., Madison. (Check "Today in the Union" boards for room.)

Please visit our webpage, <http://www.dnr.state.wi.us/org/aw/air/hot/eventscal.htm>, for up-to-date agenda information, background materials, etc.

Discussion

Agenda repair and approval of meeting summary: No changes were suggested to the agenda. Bob Fassbender said a date was incorrectly stated regarding Federal Implementation Plan deadlines; July 31, 2000 should be changed to June 14, 2002. Also, Anne Urbanski apologized for calling Steve Hirshfeld "Steve Hirshberg" in the list of participants.

New developments: Lloyd Eagan outlined the March 3 ruling on the NOx SIP call by the Federal District Court of Appeals for the District of Columbia. In a 2-1 decision, the DC Court of Appeals upheld EPA's NOx SIP call for 19 of the 22 states involved. For Wisconsin, it means we can expect tremendous NOx reductions from upwind states. The court also found that EPA did not provide enough information to support including parts of Georgia and Missouri or any of Wisconsin in the SIP call. Eagan said EPA had found that Wisconsin's significant ozone contribution was its 8-hour impacts on Michigan. Since EPA had asked the court to separate 1-hour ozone issues from the 8-hour ozone issues, this was likely the basis for the court's ruling, as the NOx SIP call is currently stayed for the 8-hour ozone standard. Eagan outlined the court's findings: (1) EPA does not have to form an ozone transport commission to regulate NOx emissions. (2) The court record does not support including any of Wisconsin or South Carolina, or portions of Missouri or Georgia, in the NOx SIP call. (3) EPA did not intrude too much on states' rights to fashion their own State Implementation Plans (SIPs). (4) EPA did not violate the Regulatory Flexibility Act. (5) EPA did not act improperly about revising the definition of the "NOx budget unit" (6) EPA did fail to provide adequate public notice of a change in the definition of "electric generating unit". (7) Due to EPA's request for a stay on 8-hour ozone issues, the court ruled only on 1-hour issues.

The big question, said Eagan, is "what does Wisconsin do now?" As we have said previously, if we don't get NOx reductions regionally we will have to get them within Wisconsin; conversely, the more reductions we get regionally, the less we have to get locally. We need to find out whether the decision is final or the litigants plan to appeal more appeals (first to the full Circuit Court, then if they uphold it or refuse to hear it, to the U.S. Supreme Court). Regardless of any appeals, Wisconsin will need to conduct additional modeling to determine the reductions we must make, if any, to attain the 1-hour standard under the new 19-state

SIP call. We expect we will still have to submit our 1-hour attainment demonstration by 12/31/00. However, the March 3, 2000 court decision does give Wisconsin more flexibility related to what should be included in its attainment demonstration. Eagan noted that EPA could decide to do another SIP call for the 8-hour standard, if and when that is upheld, so Wisconsin may not be totally off the hook yet for ozone-transport-related NOx reductions.

Keith Reopelle asked about the legal status of the challenge of the 8-hour standard; DNR attorney Tom Steidl said the US Supreme Court has been petitioned to review the earlier DC Circuit Court case, but he does not think the Supreme Court has decided whether to take the case. Eagan noted that Wisconsin could be included in a future SIP call for the 8-hour ozone standard due to its impacts on Michigan's 8-hour ozone levels. Ernie Stetenfeld asked which parts of Michigan are affected by Wisconsin emissions; Larry Bruss said most of the southern part of the Lower Peninsula. Doug Aburano of EPA Region 5 noted that the text of the decision and the conclusion have conflicting language about whether Wisconsin is completely out of the NOx SIP call or whether the decision on Wisconsin has been remanded to EPA, along with Georgia and Missouri. Even if no appeals are filed, the ruling won't be effective for at least 52 days (45 day comment period, plus 1 week) after March 3; however, EPA is sure the ruling will be appealed, so this is probably not the final word on this topic. Bob Fassbender said that states that must make NOx reductions under this court decision will have to incorporate them into their 1-hour SIPs; is part of Wisconsin's analysis going to be the 12/31 attainment demonstration deadline? Aburano said he thinks the ruling won't affect that deadline. Jay Hochmuth asked whether the circuit court's stay on the NOx SIP call (granted in May 1999) would be lifted; Aburano said he didn't know. Dave Gardner asked whether there would be a different deadline for demonstrating 8-hour attainment, if the 8-hour standard is upheld; Bruss said yes, the original deadline for the 8-hour attainment demonstration was July 2003. A new date for an attainment demonstration depends on when EPA promulgates the 8-hour nonattainment areas.

What to do with the MAPP area? Eagan said Wisconsin had joined the SIP call litigation in order to pursue exclusion of the MAPP area in northwestern Wisconsin out of the SIP call. Additional modeling done with LADCO finds no reason to include Iowa in any regional attainment plans; thus DNR feels that the MAPP region also should be excluded from the regional 1-hour attainment plans. This means that the attainment demonstration would *not* affect Northern States Power's and Dairyland Power Cooperative's electric generating units.

Opportunities for involvement: Eagan said the DNR wants input from attendees and stakeholders: What do THEY want the DNR to do now? Larry Bruss wrote down suggestions from the group, which are summarized below (with suggesting stakeholder noted):

1. Stay the interstate negotiations (WMC)
2. Stay the 1-hour attainment demonstration until get modeling is completed (WMC) (clarified that future discussions on issues of interest - ozone, toxics, PM fine - was okay, but requested disengagement from current NOx reduction proposal under discussion).
3. Model as quickly as possible (Wis. DOT)
4. Who's doing modeling?
5. Don't stop with 1-hour SIP development (Wisconsin's Environmental Decade)
6. Develop more information to marry 1-hour with 8-hour standard (CBE)
7. Model 8-hour standard (Decade)
8. Involve Briggs & Stratton and other small-engine manufacturers (particularly for VOC controls from area sources) (Briggs & Stratton)
9. Involve SC Johnson & other consumer solvent manufacturers (SC Johnson)
10. Begin assessment with NOx control in nonattainment first. Then go outside for additional controls. (WI Public Service Corp.)
11. Model SIP call as modified first, before any controls in Wisconsin (WMC)
12. Baseline for transportation is "high growth plus 7%" (Wis. Transportation Builders Association)
13. Compare residual control needed in WI with Rate of Progress need. (Wis. DOT)

14. Mobile TAG should discuss NOx options and transportation control measures which should be considered from the mobile sector.

Eagan encouraged the participants to contact her, Bruss, Bob Lopez or Tom Karman with other ideas.

Results of March 8 LADCO project team call -- Bruss said the regional attainment modeling effort slammed to a screeching halt following the Court's decision on March 3. Illinois and Indiana are not willing to commit to SIP-call control levels right now, so they don't know how to proceed. Fassbender asked if Bruss thinks LADCO will be objective in analyzing the current SIP status and would the other states support that analysis; Bruss replied yes, and we don't know. Jay Hochmuth said that what he was hearing in this meeting is that everyone wants to know what happens if the SIP call is upheld and all the states upwind are included but Wisconsin is excluded. What he heard Bruss say is that based on the latest phone call, the other LADCO states are not prepared to commit to doing such modeling. Bruss elaborated that the other states don't know what to assume for a future-year base case. There needs to be higher-level (air directors or above) discussion to make the modeling proceed at a regional level. Wisconsin does have the capability to do this, but it will take us longer and we will need help from LADCO staff in Chicago to produce some emission files. Eagan said that Bruss asked the project team for modeling the base case, as WMC had recommended; however the other states could not agree on that. If we are forced to do new modeling on our own, other states will take potshots at our modeling. Eagan thinks it is extremely important for Wisconsin to try to have cordial working relationships with other states and that Illinois and Indiana would want to verify our new results through independent modeling. Pat Stevens asked what this development meant for timing of our attainment demonstration to meet the 1-hour ozone standard. Eagan replied that we will proceed along parallel tracks: completing Wisconsin-specific modeling and pursuing LADCO modeling of the 19 state reduction option without Wisconsin (beyond Rate of Progress requirements). It's possible EPA might include the "fine-grid" part of Wisconsin along with Georgia and Missouri in the next round of SIP call modeling. Gary Van Helvoirt suggested that if the NOx emissions budget is set based on the coarse grid modeling, it should be based only on coarse grid so there's no shuffling on emission tonnages between the coarse and fine grids. Eagan said that to include Wisconsin in the coarse grid, EPA would have to determine that Wisconsin contributes significantly to one-hour nonattainment in an onshore area, not just over Lake Michigan.

Schedule for attainment demonstration -- Lopez said it is clear that the regional focus is shifting back to NOx control as the dominant strategy for the attainment demonstration. As a result DNR may de-emphasize early VOC controls and move more slowly on rule development in some categories. DNR's objective is to craft a plan that shows Wisconsin attaining and maintaining the ozone standard. We remain committed to not being forced into the 126 petition process if we don't have to be. An important issue for major sources is the uncertainty the court decision creates regarding the capability of Wisconsin sources to participate in a broad-area emission trading program. This suggests a regional agreement could provide a way to make that possible. Stevens asked Lopez for his interpretation of how the court decision affects trading; Lopez said if Wisconsin is not formally part of the SIP call region, it appears we would not be able to trade emission credits into that trading pool. Aburano agreed that there is currently no language in EPA's rule to allow sources outside the NOx SIP call area to trade into the pool. Regarding backstop strategies, Lopez said that even with updated modeling Wisconsin can't say it's done its part if the state depends totally on other states' reductions.

In the wake of the court decision, Lopez said, the 1-hour ozone demonstration probably will contain most of the elements previously discussed. The VOC control program will mostly comprise clean-up rules such as non-CTG RACT. Lopez emphasized that if Wisconsin submits a plan that is at risk of not attaining the ozone standard, we will put major sources at risk for an excess emissions fee of \$5,000 per ton (a fee that is hardwired into the 1990 Clean Air Act Amendments). It would make sense, Lopez said, to try get some commitments for emission reductions beyond the level of the NOx SIP call through mechanisms like voluntary programs and cooperative agreements and incorporate those in the ozone SIP. Mark Steinberg asked why, based on what he heard today, any additional VOC controls would be needed. Lopez said additional VOC controls probably won't be necessary but it might be useful to balance additional VOCs controls with

some level of NOx controls. Stevens said he though he heard DNR say that new VOC controls would not be part of the one-hour SIP; Eagan said we must proceed with a few VOC controls that will correct deficiencies in our previous SIP submittal. Lopez said Wisconsin would prefer to work with other states to craft area-source VOC control programs if they are needed to reach attainment by 2007. Steinberg asked if the attainment demonstration deadline for Wisconsin was expected to change; Aburano said he believes it won't change.

Lopez said a big question is what NOx control programs might look like if Wisconsin still needs to pursue them after the other states have implemented NOx reductions at 0.15lbs/MMBTU. DNR plans to put out a menu of control options and will craft its green sheet comments so that people can submit comments on particular items, not just the whole package. Carol Cutshall asked what was included in the menu of options. Lopez said the technical advisory group is looking at ranges of controls on NOx point sources; the controls range from NOx SIP call stringency down to "best management practices" for combustion sources. DNR is still considering a broad geographic base for controls. Tom Walker asked if NOx cutpoints for vehicle inspection/maintenance would be included; Lopez said it has not been excluded. Walker said it would be helpful for the Mobile Source Technical Advisory Group to reconvene to discuss this. Skibicki asked about geographic issues; Lopez said DNR is not able to finalize coarse vs. fine grid issues at this point. Fassbender asked why DNR was going to ask for public hearing authorization when, in his opinion, there are problems with providing adequate public notice and opportunities for comment; Lopez replied that the new modeling results would be described in the public hearing process so that people have adequate opportunity to comment, and DNR would hold public informational meetings prior to the hearings. Greg Eirschele asked if the NOx waiver area would be included in the new modeling analysis. Lopez said that DNR probably wouldn't deal with the waiver area directly if it doesn't have to. Bruss noted that DNR could "cherry-pick" certain NOx controls and apply those within the nonattainment area without destroying the entire waiver.

Lopez and Eagan said there needed to be another Task Force meeting before the April Natural Resources Board meeting. The group tentatively chose April 12, depending on room *availability (note: due to some logistical problems DNR rescheduled the meeting to April 19)*.

Conformity budget - Eagan said DNR is working very closely with transportation stakeholders on the conformity budget. Wisconsin has to submit an approvable motor vehicle emission budget (MVEB) to EPA by May 31, or the conditional approval of our phase 2 ozone SIP will be converted to disapproval. Due to the uncertainty of trying to predict emissions, the vehicle mix and other factors, the transportation stakeholders **strongly** recommend establishing a safety margin in the MVEB to minimize the potential for conformity failure (which would stop all transportation projects dead, including transit as well as highway projects). Following DNR's public hearing in February, EPA said they could not determine whether the MVEB submitted at that time, consistent with LMOP strategy 2, was adequate because DNR had not held a public hearing on the concept of a safety margin or buffer. So DNR will hold a public hearing on that concept on April 14 in Milwaukee. Ken Yunker offered a correction, that the stakeholders saw the "safety margin" as more of a "margin of uncertainty" because of what they have found is tremendous uncertainty in predicting vehicle miles traveled, vehicle mix and other factors. Rob Kennedy said the environmental community supports the uncertainty margin because they've had good assurances that the mobile sector will try to make progress on the issue of transportation control measures. Ernie Stetenfeld said his understanding was the group committed to exploring and evaluating TCMs based on criteria that Kennedy is developing, not specifically to doing TCMs. Eagan noted that if Wisconsin stays within the LMOP Strategy 2 mobile source budget, we'll be okay because with the other parts of the budget already established, Wisconsin has modeled attainment. The transportation stakeholders want to see this discussion carried over into the phase 3 SIP currently being developed, so we will have to address any air quality impacts that may be involved in establishing an uncertainty factor. Stetenfeld suggested the Mobile Source TAG as an appropriate forum for Kennedy's ideas.